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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,726	01/21/2004	Yury M. Podrazhansky	4E09.1-020	3657

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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/761,726	Applicant(s) PODRAZHANSKY ET AL.	
	Examiner Danton DeMille	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/20, 4/20/5, 5/6/4</u> . | 6) <input type="checkbox"/> Other: ____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cady.**

3. Cady teaches a “microprocessor 24 with memory to permit the entry and storage of complex wave form programs which the applying practitioner may develop.” Cady also teaches three different oscillating outputs with one output being lower than the other. The sinusoidal output would appear to comprehend the claimed sweep since dependent claim 25 refers to the sweep as being a sinusoidal waveform. Moreover Cady teaches a modulator 26 for combining the different outputs. A sweep is a modulated waveform and therefore comprehends Cady. Driver 28 is also taught amplifying the output to the transducer.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nedwell in view of Van Brunt et al.**

6. Nedwell teaches a ramp generator circuit 16 that sweeps the frequency between a lower limit and an upper limit, column 3, lines 19-25. Nedwell also provides a driver circuit 12. Nedwell teaches a typical frequency range of 40 to 160 Hz. Nedwell also teaches an additional frequency of about 16 Hz or a range from 16 Hz upwards may be employed in order to excite a Helmholtz resonance of the person's lungs, column 4, lines 10-16. It would appear that the ramp generator circuit 16 comprehends the claimed "processor". Applicant doesn't claim a microprocessor and algorithm to generate the ramp signals until a later dependent claim. Therefore it would appear applicant is intending to comprehend something other than a microprocessor and algorithm in claim 1 to process and generate a ramped signal.

7. However, to any extent the ramp generator circuit doesn't comprehend a "processor" to generate signals and process the signal into ramped signals, it would have been obvious to automate something that is done manually. It would have been obvious to provide a "processor" to generate the ramped signal so that the signal can be easily modified or changed by simply programming a different pattern. Furthermore, it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to accomplished the same result. *In re Verner*, 120 USPQ 192.

8. Van Brunt teaches an air pulse generator transducer 16 that uses a "processor" that is programmable to provide any number or range of frequencies. The processor provides a high frequency sweep, a normal frequency sweep and a low frequency sweep. Clearly providing a "processor" that is programmed with any number of different sweeps or any number of frequency ranges is well known to the artisan of ordinary skill as taught by Van Brunt.


9. It would have been obvious to one of ordinary skill in the art to modify Nedwell to automate and provide a processor to generate the different frequency ranges as taught by Van Brunt in order to be able to change and modify the parameters by simply programming the processor to do it.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-Th from 8:30 to 6:00. The examiner can also be reached on alternate Fridays.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4 February 2006


Danton DeMille
Primary Examiner
Art Unit 3764